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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,399	12/12/2003	Hag Sin Kim	0465-1079P	9133

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EXAMINER
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PELHAM, JOSEPH MOORE

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/733,399

Applicant(s)

KIM ET AL.

Examiner

Joseph M Pelham

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-37 and 40 is/are rejected.
- 7) ☒ Claim(s) 38 and 39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/10/04, 12/30/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### ***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on 2/23/05 is acknowledged. The traversal is on the ground(s) that the inventions of Groups I and II are not "independent and distinct," as ostensibly required by 35 USC 121. This is not persuasive because these terms *as defined by Applicants' counsel* do not apply in ordinary patent prosecution, which fact is explicitly disclosed in the text of MPEP 802.01, which he has cited for definitions of the subject terms: "The law has long been established that dependent inventions (frequently termed related inventions) such as used for illustration above may be properly divided if they are, in fact, "distinct" inventions, even though dependent."

Applicant's counsel appears presently to misunderstand principal elements of restriction practice. He is urged to read the full text of 802.01, noting the longest paragraph, which notwithstanding is quite brief and contains the quotation immediately above, and as well the balance of this chapter in the MPEP, with particular attention to 806.05(h), which was cited in the original restriction requirement.

As stated in the previous Office action, inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (***MPEP § 806.05(h)***). In the instant case the oven can be used with conventional temperature set point operation.

The requirement is still deemed proper and is therefore made FINAL.

The Examiner notes that claims 31-40 are also properly definable as a third restrictable group, as "subcombinations usable together" (See MPEP 806.05(d)). Even the door-oven subcombination of claims 35-40 does not positively recite electric heating means. However, to avoid further delays in prosecution the Examiner will examine the electric heating and door subcombinations together.

### ***Specification***

The disclosure is objected to because of the following informalities: at page 13, paragraph 43, line 7, "fans 410 and 420" should be "heaters.;" at page 18, paragraph 64, last line, is clearly mistaken in its identifying "second partition plate 920."

Appropriate correction is required. ***The Examiner notes that he has not reviewed the entire specification. In view of the errors cited above, and those cited in the 35 USC 112 rejections immediately following, it is strongly urged that Applicants carefully review the entire disclosure and make all needed corrections, because the Examiner has likely identified only a fraction.***

### ***Claim Rejections - 35 USC § 112***

Art Unit: 3742

Claims 1-13, 15-34, and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "a heater cover *in* the upper part of the inner case over the holes" (Examiner's emphasis); however, the cover is not "in" the inner case, but between the inner and outer cases. *Claim 15 makes a similar misstatement.*

Claim 2, recites "the heater and the fan housing... **opposite** the door" (Examiner's emphasis), whereas only the fan is properly "opposite" the door. The heater is between the top (or ceiling) portions of the inner and outer cases, adjacent the wall opposite the door. *Claims 4 and 24 make similar misstatements.*

Claims 17 and 37 recite a "fan.. *in* an upper part of rear of the inner case," however, the fan is not "in" the inner case, but between the inner and outer cases.

Claim 28 recites "the fan motor... on a suction side of the fan," which is unclear since these refer to two different fans. The 'cooling fan' should be identified as such, to distinguish it from the convection heating fan and its components.

The structure recited in claim 19 appears to be identical to that of claim 18, hence it is unclear what distinction Applicants contemplate.

Claim 31 recites the "introduction of air **circulating** the electric oven," which does not clearly specify the source air and hence the structural requirements of the recited door: the specification lacks disclosure of source air circulating *in* the oven.

#### ***Claim Rejections - 35 USC § 102***

Claims 15, 17, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. 4096369 (US'369).

Referring to Figs. 1, 2 & 5, and col. 3, line 47, through col. 4, line 34, US'369 discloses an outer case 1, with cooling air inlet 29 and outlet 32, inner case 2 with a plurality of holes in upper part thereof 10, a heater cover 20, heater 9, and a cooling fan 30 to cool the heater cover 20. The holes in upper surface 10 can be grouped so as to comprise a first plurality adjacent the rear wall and a second plurality between the first and the door, as recited in claim 24; and of the two heaters 9 depicted in Fig. 1, the language of claim 25 does not preclude each heater over **both** the first and second plurality of holes.

Claims 31, 34-37, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. 5918589 (US'589).

Referring to Fig. 2 and col. 3, line 58, through col. 4, line 12, especially, US'589 discloses an oven outer case 56 with cooling fan 40, air discharge holes 26 over the door 18, air suction holes 60, 62, inner case 50, door air inlet hole 64 and outlet hole 22, an air passage behind the door front surface, and cooling with fan 40 the upper part of the inner and outer cases.

#### ***Allowable Subject Matter***

Claims 38 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3742

Claims 1-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

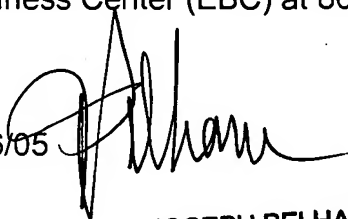
Claims 16, 18-23, 26-30, 32, and 33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4/26/05



JOSEPH PELHAM  
PRIMARY EXAMINER